

Message Text

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ACTION IO-10

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TAGS: UNGA SHUM

SUBJ: THIRD COMMITTEE-SECRETARY'S INITIATIVE ON TORTURE

REF: USUN 4558

1. PARA 6 REFTEL DESCRIBED SITUATION OF WEO PLANNING ON TORTURE ITEM AS OF SEPT. 26. DEPT SHOULD ALSO BE AWARE SOME WEO PLENARY SPEECHES (E.G. BELGIUM, IRELAND) HAVE ENDORSED SECRETARY'S PROPOSAL FOR A STUDY GROUP ON TORTURE. AT PRESENT TIME GREATEST NEED IS FOR USDEL TO BE IN A POSITION TO MOVE PREEMPTORILY TO FORECLOSE POSSIBILITY OF DUTCH PROCEDURAL DRAFT DISCRIBED REFTEL. THEREFORE, USDEL REQUIRES BY COB SEPTEMBER 29. AN APPROVED DRAFT RES. TO SUBMIT TO SECRETARIAT TO GAIN PROCEDURAL PRIORITY AND TO BEGIN CONSULTATIONS WITH OTHER DELS.

2. USUN RECOMMENDS APPROVAL OF FOLLOWING TEXT:

THE GENERAL ASSEMBLY
BEARING IN MIND THAT ARTICLE 5 OF THE UNIVERSAL DECLARATION
OF HUMAN RIGHTS AND ARTICLE 7 OF THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS AFFIRM THAT NO ONE SHALL BE SUBJECTED
TO TORTURE OR TO CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT,

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REAFFIRMING THE REJECTION IN RESOLUTION 3059(XXVIII)

AND 3218(XXIV) OF ANY FORM OF TORTURE,

WELCOMING THE DECISION OF THE SUBCOMMISSION ON THE PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES TO REVIEW ANNUALLY THE SITUATION CONCERNING THE HUMAN RIGHTS OF DETAINED OR IMPRISONED PERSONS,

NOTING WITH APPRECIATION THE WORK ON THIS SUBJECT AT THE FIFTH UN CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS,

DEEPLY CONCERNED AT THE CONTINUED REPORTS THAT TORTURE IS BEING PRACTICED IN MANY COUNTRIES IN THE WORLD, USING THE OVERWHELMING POWER OF GOVERNMENT NOT TO IMPROVE PEOPLE'S WELFARE BUT AS AN INSTRUMENT OF THEIR SUFFERING,

DETERMINED THAT THE ORGANIZED CONCERN OF THE WORLD COMMUNITY BECOME A POTENT WEAPON IN THE STRUGGLE AGAINST THIS ABHORRENT PRACTICE,

A. ADOPTS THIS DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AS A GUIDELINE FOR ALL STATES AND OTHER ENTITIES EXERCISING EFFECTIVE POWER.

ARTICLE II

FOR THE PURPOSE OF THIS DECLARATION, TORTURE MEANS ANY ACT BY WHICH SEVERE PAIN OR SUFFERING, WHETHER PHYSICAL OR MENTAL, IS INTENTIONALLY INFLICTED BY OR AT THE INSTIGATION OF A PUBLIC OFFICIAL ON A PERSON, FOR SUCH PURPOSES AS OBTAINING FROM HIM OR A THIRD PERSON INFORMATION OF CONFESSION, PUNISHING HIM FOR AN ACT HE HAS COMMITTED OR IS SUSPECTED OF HAVING COMMITTED, OR INTIMIDATING HIM OR OTHER PERSONS. IT DOES NOT INCLUDE PAIN OR SUFFERING ARISING ONLY FROM, INHERENT IN OR INCIDENTAL TO LAWFUL DEPRIVATION OF LIBERTY TO THE EXTENT CONSISTENT WITH THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS.

TORTURE CONSTITUTES AN AGGRAVATED AND DELIBERATE FORM OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

ARTICLE

ANY ACT OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IS AN OFFENCE TO HUMAN DIGNITY AND SHALL BE CONDEMNED AS A BREACH OF THE PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS AND AS A VIOLATION OF HUMAN RIGHTS AND LIMITED OFFICIAL USE

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FUNDAMENTAL FREEDOMS PROCLAIMED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS.

ARTICLE 3

NO STATE MAY PERMIT OR TOLERATE TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT. EXCEPTIONAL CIRCUMSTANCES SUCH AS STATE OF WAR OR A THREAT OF WAR, INTERNAL POLITICAL INSTABILITY OR ANY OTHER PUBLIC EMERGENCY MAY NOT BE

INVOKED AS A JUSTIFICATION OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OF PUNISHMENT.

ARTICLE 4

EACH STATE SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION, TAKE EFFECTIVE MEASURES TO PREVENT TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT FROM BEING PRACTICED WITHIN ITS JURISDICTION.

ARTICLE 5

THE TRAINING OF THE POLICE AND RELATED LAW ENFORCEMENT PERSONNEL AND OF OTHER PUBLIC OFFICIALS WHO MAY BE RESPONSIBLE FOR PERSONS DEPRIVED OF THEIR LIBERTY SHALL ENSURE THAT FULL ACCOUNT IS TAKEN OF THE PROHIBITION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OF PUNISHMENT. THIS PROHIBITION SHALL ALSO, WHERE APPROPRIATE, BE INCLUDED IN SUCH GENERAL RULES OR INSTRUCTIONS AS ARE ISSUED IN REGARD TO THE DUTIES AND FUNCTIONS OF ANYONE WHO MAY BE INVOLVED IN THE CUSTODY OR TREATMENT OF SUCH PERSONS.

ARTICLE 6

EACH STATE SHALL KEEP UNDER SYSTEMATIC REVIEW INTERROGATION METHODS AND ARRANGEMENTS FOR THE CUSTODY AND TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY IN ITS TERRITORY, WITH A VIEW TO PREVENTING ANY CASES OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

ARTICLE 7

EACH STATE SHALL ENSURE THAT ALL ACTS OF TORTURE AS DEFINED IN ARTICLE 1 ARE OFFENCES UNDER ITS CRIMINAL LAW. THE SAME SHALL APPLY IN REGARD TO ACTS WHICH CONSTITUTE PARTICIPATION IN, COMPLICITY IN, INCITEMENT TO OR AN ATTEMPT TO COMMIT TORTURE.

ARTICLE 8

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ANY PERSON WHO ALLEGES HE HAS BEEN SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT BY OR AT THE INSTIGATION OF A PUBLIC OFFICIAL SHALL HAVE THE RIGHT TO HAVE HIS CASE IMPARTIALLY EXAMINED BY THE COMPETENT AUTHORITIES OF THE STATE CONCERNED.

ARTICLE 9

WHEREVER THERE IS REASONABLE GROUND TO BELIEVE THAT AN ACT OF TORTURE AS DEFINED IN ARTICLE 1 HAS BEEN COMMITTED, THE COMPETENT AUTHORITIES OF THE STATE CONCERNED SHALL PROMPTLY PROCEED TO AN IMPARTIAL INVESTIGATION EVEN IF THERE HAS BEEN NO FORMAL COMPLAINT.

ARTICLE 10

IF AN INVESTIGATION UNDER ARTICLE 8 OR ARTICLE 9 ESTABLISHES THAT AN ACT OF TORTURE AS DEFINED IN ARTICLE 1 APPEARS TO HAVE BEEN COMMITTED, CRIMINAL PROCEEDINGS SHALL BE INSTITUTED AGAINST THE ALLEGED OFFENDER OR OFFENDERS IN ACCORDANCE WITH NATIONAL

LAW. IF AN ALLEGATION OF OTHER FORMS OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IS CONSIDERED TO BE WELL-FOUNDED, THE ALLEGED OFFENDER OR OFFENDERS SHALL BE SUBJECT TO CRIMINAL, DISCIPLINARY OR OTHER APPROPRIATE PROCEEDINGS.

ARTICLE 11

WHERE IT IS PROVED THAT AN ACT OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OF PUNISHMENT HAS BEEN COMMITTED, THE VICTIM SHALL BE AFFORDED REDRESS AND COMPENSATION, IN ACCORDANCE WITH NATIONAL LAW.

ARTICLE 12

ANY STATEMENT WHICH IS ESTABLISHED TO HAVE BEEN MADE AS A RESULT OF TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT MAY NOT BE INVOKED AS EVIDENCE AGAINST THE PERSON CONCERNED IN ANY PROCEEDINGS OR AGAINST ANY OTHER PERSON IN ANY PROCEEDINGS.

B.1. ESTABLISHES AN EXPERT WORKING GROUP OF NOT MORE THAN FIFTEEN INDEPENDENT MEMBERS SERVING IN THEIR PERSONAL CAPACITY AND QUALIFIED BY THEIR COMPETENCE AND IMPARTIALITY TO BE APPOINTED BY THE SECRETARY-GENERAL TO:

A) STUDY THE NATURE AND EXTENT OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AS IT EXISTS IN THE WORLD TODAY BY REVIEWING SUCH RELIABLE INFORMATION AS IS PRESENTLY AVAILABLE WITHIN THE UNITED NATIONS SYSTEM AND BY EXAMINING OTHER RELIABLE INFORMATION FROM GOVERNMENTS, FROM NON-GOVERNMENTAL ORGANIZATIONS IN LIMITED OFFICIAL USE

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CONSULTATION STATUS WITH THE ECONOMIC AND SOCIAL COUNCIL, AND FROM WITNESSES AS THE WORKING GROUP SEES FIT;

BL CONSULT WITH GOVERNMENTS AS THE WORKING GROUP CONSIDERS NECESSARY CONCERNING ALLEGATIONS OF TORTURE IN ORDER TO PROVIDE THAT THE POSITIONS OF THESE GOVERNMENTS ARE REFLECTED IN THE WORKING GROUP'S REPORT; AND,

C) IDENTIFY SITUATIONS IN WHICH THERE IS A PATTERN OF WIDESPREAD ACTS OF TORTURE CARRIED OUT WITH THE KNOWLEDGE OR ACQUIESCENCE OF GOVERNMENTAL AUTHORITIES;

2. INVITES MEMBER STATES TO COOPERATE WITH THE WORKING GROUP.

3. DIRECTS THE WORKING GROUP TO SUBMIT ITS REPORT FOR CONSIDERATION BY THE THIRTY-FIRST GENERAL ASSEMBLY.

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